

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

KELLY SHAFFSTALL,

Plaintiff,

v.

OLD DOMINION FREIGHT LINE, INC.,

Defendant.

CASE NO. C18-1656-JCC

ORDER

This matter comes before the Court on Plaintiff's motion to compel (Dkt. No. 15). Having thoroughly considered the parties' briefing and the relevant record, the Court hereby GRANTS in part and DENIES in part the motion for the reasons explained herein.

**I. BACKGROUND**

Plaintiff Kelly Shaffstall was an employee of Priority Freight Lines when it was purchased by Defendant Old Dominion Freight Line, Inc. in April 2007. (Dkt. No. 1-1 at 2.) Plaintiff was initially employed as a technician, a role in which he was responsible for repairing heavy equipment, such as trucks, trailers, and forklifts. (*Id.* at 3.) During this time, Plaintiff reported to Maintenance Manager Bruce Landry, and Mr. Landry reported to Pacific Northwest Regional Manager Don Orlowski. (*Id.*) Plaintiff asserts that shortly after Defendant purchased Priority Freight Lines, Mr. Landry told him that Defendant prohibited working overtime. (*Id.*)

In July 2008, Plaintiff was promoted to Maintenance Manager, a role in which he was

1 responsible for supervising technicians and performing administrative functions, such as  
2 maintaining employee time records. (*Id.* at 4.) After he was promoted, Plaintiff contends that Mr.  
3 Orlowski told him that Defendant strictly prohibited employees from working overtime. (*Id.*)  
4 Plaintiff also says that Mr. Orlowski instructed him about appropriate procedures to use to ensure  
5 that employees did not work over 40 hours in a week. (*Id.*) One such procedure was changing  
6 employee clock-in and clock-out times if the employee inaccurately clocked in before they  
7 actually began working. (*Id.*)

8 In April 2016, Plaintiff was diagnosed with cancer. (*Id.* at 5.) In July 2017, Plaintiff had  
9 surgery to remove tumors on his stomach and liver. (*Id.*) Plaintiff told Mr. Orlowski about the  
10 upcoming surgery two months before it was scheduled to occur. (*Id.*) Plaintiff contends that,  
11 because he feared Defendant would retaliate against him if he applied for leave under the  
12 Washington Family and Medical Leave Act (“WFMLA”), he used vacation time for his surgery.  
13 (*Id.*) During his time off, Plaintiff still performed some administrative functions of his job. (*Id.*)

14 In December 2017, Mr. Orlowski died suddenly and was replaced by former Maintenance  
15 Manager Lorrin Wallace. (*Id.*) In January 2018, Plaintiff gave Mr. Wallace notice that he would  
16 have another cancer treatment surgery in March 2018. (*Id.*) Plaintiff reports that after he gave  
17 Mr. Wallace this notice, Mr. Wallace began to “take issue with Plaintiff for no apparent reason.”  
18 (*Id.*) For example, Plaintiff contends that even though Plaintiff had no control over the return of  
19 trucks, Mr. Wallace threatened that he would demote or terminate Plaintiff if the trucks did not  
20 return sooner. (*Id.*) Additionally, Mr. Wallace criticized Plaintiff’s appearance by telling him: “I  
21 can’t tell you how to cut your hair, but I want managers to look professional.” (*Id.* at 5–6.)

22 Again out of fear of retaliation if he applied for leave under the WFMLA, Plaintiff used  
23 vacation time and sick leave for his March 2018 surgery. (*Id.* at 6.) His surgery was on March  
24 29, and he returned to work on April 12. (*Id.*) Plaintiff worked on Friday, April 13, but he had to  
25 work from home on Monday, April 16 because of a fever. (*Id.*) On April 17, Plaintiff was at  
26 work when Mr. Wallace came into Plaintiff’s office with Regional Human Resources Manager

1 Tom Lillywhite on speakerphone. (*Id.*) Mr. Lillywhite asked Plaintiff if he had been changing  
2 employee clock punch times, and Plaintiff responded that he had to ensure that the clock times  
3 reflected actual hours worked. (*Id.*) Mr. Lillywhite responded that changing the clock times was  
4 illegal, and that Plaintiff was terminated. (*Id.*) Plaintiff believes that he was actually terminated  
5 because of Defendant's discrimination against him based on his disability. (*Id.* at 1.)

6 Plaintiff brought this lawsuit, alleging violation of Washington's Law Against  
7 Discrimination ("WLAD"), wrongful discharge in violation of public policy, and violation of the  
8 WFMLA. (*Id.* at 7–8.) During discovery, Plaintiff sought responses to various requests for  
9 production and interrogatories. (*See* Dkt. No. 15.) Plaintiff alleges that Defendant failed to  
10 produce documents and answer interrogatories sufficiently, which is the subject of the instant  
11 motion to compel. (*Id.*)

## 12 **II. DISCUSSION**

### 13 **A. Motion to Compel**

14 Discovery motions are strongly disfavored. "Parties may obtain discovery regarding any  
15 nonprivileged matter that is relevant to any party's claim or defense and proportional to the  
16 needs of the case . . . ." Fed. R. Civ. P. 26(b)(1). In addressing the proportionality of discovery,  
17 the Court considers "the importance of the issues at stake in the action, the amount in  
18 controversy, the parties' relative access to relevant information, the parties' resources, the  
19 importance of the discovery in resolving the issues, and whether the burden or expense of the  
20 proposed discovery outweighs its likely benefit." *Id.* The Court has broad discretion to decide  
21 whether to compel discovery. *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d  
22 1206, 1211 (9th Cir. 2002).

23 If a requested disclosure is not made, the requesting party may move for an order  
24 compelling such disclosure. Fed. R. Civ. P. 37(a)(1). "The party who resists discovery has the  
25 burden to show that discovery should not be allowed, and has the burden of clarifying,  
26 explaining, and supporting its objections." *Cable & Comput. Tech., Inc. v. Lockheed Saunders*,

1 *Inc.*, 175 F.R.D. 646, 650 (C.D. Cal. 1997). This burden is a heavy one in employment  
2 discrimination lawsuits, where discovery rules are construed liberally so as to provide the  
3 plaintiff with “broad access to the employers’ records.” *Wards Cove Packing Co., Inc. v. Atonio*,  
4 490 U.S. 642, 643 (1989), *superseded by statute on other grounds*, Civil Rights Act of 1991,  
5 Pub. L. No. 102-166, 105 Stat. 1074.

6 Plaintiff seeks a fuller response to various requests for production and interrogatories  
7 included in Defendant’s first and second sets of discovery responses. (*See* Dkt. No. 15.) In the  
8 first set, Plaintiff seeks a full response to Requests for Production 5 and 8, which seek documents  
9 related to the investigation into and reasons for Plaintiff’s termination (“First Discovery Set  
10 Dispute”). In the second set, Plaintiff seeks a full response to Interrogatories 1 and 2 and  
11 Requests for Production 1–3, which seek information about employees not paid because of  
12 Plaintiff’s alleged time card fraud (“Second Discovery Set Dispute”).

13 *1. First Discovery Set Dispute*

14 Requests for Production 5 and 8 ask Defendant to produce documents related to the  
15 investigation into and the reasons for Plaintiff’s termination. (Dkt. No. 15 at 5–9.) Plaintiff  
16 believes that Mr. Wallace used a “Wallace Report” in his decision to terminate Plaintiff, and  
17 wants the Court to compel Defendant to produce the Wallace Report and specific instances of  
18 time card fraud that Defendant alleges were the basis of Plaintiff’s termination. (*See id.*)  
19 Defendant contends that Mr. Wallace looked at a series of different reports in his decision to  
20 terminate Plaintiff—the “SM Approval Report,” the “Comparison Approval Reports,” and the  
21 “Live ESI Report.” (Dkt. No. 18 at 10–11.) The parties appear to agree that Plaintiff already has  
22 access to what Defendant calls the “SM Approval Report” and the “Comparison Approval  
23 Reports.” (*See* Dkt. No. 22 at 3–6.) It appears that the “Live ESI Report” is the same thing as the  
24 “Wallace Report,” and even if it is not, Defendant certifies that these are the three reports that  
25 Mr. Wallace reviewed when deciding whether to report Plaintiff’s behavior, and were the basis  
26 for Plaintiff’s termination. (*See* Dkt. No. 18.) Therefore, to the extent that Defendant has not

1 produced the “Live ESI Report” to Plaintiff, Plaintiff’s motion to compel is GRANTED. If  
2 Defendant has produced the “SM Approval Report,” the “Comparison Approval Reports,” and  
3 the “Live ESI Report,” Plaintiff’s motion is DENIED.

4 *2. Second Discovery Set Dispute*

5 Interrogatories 1 and 2 and Requests for Production 1–3 ask Defendant for information  
6 about the employees that were allegedly denied proper wages because of Plaintiff’s time card  
7 fraud. (Dkt. No. 15 at 9–10.) After Plaintiff filed his motion to compel, the parties reached an  
8 agreement on the issues (*see* Dkt. Nos. 18 at 11, 22 at 2–3), demonstrating that the parties are in  
9 a much better position to resolve discovery disputes than the Court. Plaintiff’s motion for a full  
10 response to Interrogatories 1 and 2 and Requests for Production 1–3 is DENIED as moot.

11 **B. Requests for Attorney Fees**

12 Both parties ask the Court to award attorney fees on the basis that the other party’s  
13 conduct merits an award of fees. (*See* Dkt. Nos. 15 at 12–13, 18 at 12.) If a motion to compel  
14 discovery is granted in part and denied in part, the Court may award attorney fees. Fed. R. Civ.  
15 P. 37(a)(5)(C). The Court finds that attorney fees are not appropriate for either party. Both  
16 parties could have taken steps to avoid the present discovery dispute, and, in fact, the parties  
17 resolved most of the issues without the Court’s involvement. Therefore, the Court ORDERS the  
18 parties to engage in good faith meet and confer sessions before filing future discovery motions.

19 **C. Motion to Strike**

20 Defendant filed a surreply arguing that portions of Plaintiff’s reply and supporting  
21 declaration should be struck because (1) they raise new arguments and (2) they contain hearsay.  
22 (*See* Dkt. No. 27.) The Court did not consider the challenged portions of Plaintiff’s reply in  
23 reaching the decisions in its order. Defendant’s motion to strike is DENIED.

24 **III. CONCLUSION**

25 For the foregoing reasons, Plaintiff’s motion to compel (Dkt. No. 15) is GRANTED in  
26 part and DENIED in part. To the extent it has not already produced the “Live ESI Report,”

1 Defendant is ORDERED to produce the report to Plaintiff within 7 days of the date this order is  
2 issued. The parties are ORDERED to meet and confer in good faith before filing future discovery  
3 motions.

4 DATED this 13th day of August 2019.

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8 John C. Coughenour  
9 UNITED STATES DISTRICT JUDGE  
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